

plus 0.40 times its 2000-crop sugar production, with the 2000 sugar PIK payments added to its 2000-crop sugar production.

(3) A beet processor's weighted average sugar production shall be adjusted by the following, as CCC determines:

(i) Increased 1.25 percent of the sum of all beet processors' weighted average sugar production for opening a sugar beet processing factory during the 1996 through 2000 crop years;

(ii) Decreased 1.25 percent of the sum of beet processors' weighted average sugar production for closing a sugar beet processing factory during the 1998 through 2000 crop years;

(iii) Increased 0.25 percent of the sum of all beet processors' weighted average sugar production for opening a molasses desugarization facility during the 1998 through 2000 crop years; and

(iv) Increased 1.25 percent of the sum of all beet processors' weighted average sugar production for suffering a substantial quality loss on stored beets, as CCC determines, during the 1998 through 2000 crop years.

(b) Each sugarcane processors' allocation from a State cane sugar allotment will be calculated as the cane processor's share times the State cane sector allotment.

(1) Each cane processor's share, other than a new entrant, will be calculated as the processor's production base divided by the sum of the State's processor production bases.

(2) A processor's production base, other than a new entrants, is the sum of 0.50 times its ability to market plus 0.25 times its past processings plus 0.25 times its past marketings. These weights may be adjusted as CCC deems appropriate for the crop year.

(3) CCC will calculate an allocation for the Talisman processing facility, based on paragraph (b)(2) of this section and distribute the allocation among Florida processors according to the agreements between cane processors and the Secretary of the Interior dated March 25, and March 26, 1999.

(c) An informal hearing will be held in August of each year, if requested by affected sugarcane processors and growers by July 15th, to afford all interested persons the opportunity to comment on the next crop year's mar-

keting allotments and allocations. After consideration of comments obtained at the hearing, a final determination on cane State allotments and processor allocations will be announced.

(d) During any crop year in which marketing allotments are in effect and allocated to processors, the quantity of sugar and sugar products that a processor markets shall not exceed the quantity of the processor's allocation.

(e) Paragraph (d) of this section shall not apply to:

(1) Any sugar marketings to facilitate the export of sugar or sugar-containing products;

(2) Any sugar marketings for nonhuman consumption; and

(3) Any processor marketings of sugar to another processor made to enable the purchasing processor to fulfill its allocation if such sales;

(i) Are made before May 1, and

(ii) Reported to CCC within 51 days of the date of sale.

(f) Paragraph (d) of this section also shall not apply to marketings of purchased sugar marketed in the crop year of the purchase, but does apply to marketings of sugar purchased as part of a transaction pursuant to paragraph (e)(3) of this section.

(g) CCC may charge liquidated damages, as specified in a surplus allocation survey and agreement, on surplus allocation after the end of a crop year if the processor had surplus allocation because the processor provided incomplete or erroneous information to CCC.

[67 FR 54926, Aug. 26, 2002, as amended at 69 FR 39813, July 1, 2004]

#### **§ 1435.308 Transfer of allocation, new entrants.**

(a) If a sugar beet or sugarcane processing facility is closed, and the growers that delivered their crops to the closed facility elect to deliver their crops to another processor, the growers may petition the Executive Vice President, CCC, to transfer their share of the allocation from the processor that closed the facility to their new processor. If CCC approves transfer of the allocations, it will distribute the closed mill's allocation based on the contribution of the growers' production history to the closed mill's allocation.

CCC may grant the allocation transfer upon:

(1) Written request by a grower to transfer allocation,

(2) Written approval of the processing company that will accept the additional deliveries, and

(3) Evidence satisfactory to CCC that the new processor has the capacity to accommodate the production of petitioning growers.

(b) Subject to a transfer of allocation, if any, described in paragraph (a) of this section being completed, CCC will permanently eliminate the processor's remaining allocation and distribute it to all other processors on a pro-rata basis when the processor:

(1) Has been dissolved,

(2) Has been liquidated in a bankruptcy proceeding, or

(3) Has permanently terminated operations by:

(i) Not processing sugarcane or sugar beets for 2 consecutive years, or

(ii) Notifying CCC that the processor has permanently terminated operations.

(c) If a purchaser purchasing the assets of another processor is a new entrant or is a processor purchasing all the assets of the selling processor, then CCC shall immediately transfer allocation commensurate with the purchased factories' production history.

(d) If a processor does not purchase all of the assets of another processor, then the purchased factories must operate for the remainder of the initial season and the following crop year for the purchasing processor to permanently obtain the allocation. If the purchased factories do not operate for this required time period, CCC shall reassign the allocation to the other processors on a pro rata basis.

(e) Allocations, equal to the number of acres of proportionate shares being transferred times the State's per-acre yield goal, will be transferred between mills in proportionate share States, if the transfers are based on:

(1) Written consent of the crop-share owners, or their representatives,

(2) Written consent of the processing company holding the allocation for the subject proportionate shares,

(3) Written consent of the processing company that will accept the additional sugarcane deliveries, and

(4) Evidence, satisfactory to CCC, that the additional sugarcane deliveries will not exceed the processing capacity of the receiving company.

(f) New entrants, not acquiring existing facilities with production history in the base period, may apply to the Executive Vice President, CCC, for an allocation.

(1) Applicants must demonstrate their ability to process, produce, and market sugar for the applicable crop year.

(2) CCC will consider adverse effects of the allocation upon existing processors and producers.

(3) New entrant cane processors are limited to 50,000 short tons, raw value, the first crop year.

(4) New entrant cane processors will be provided, as determined by CCC:

(i) A share of their State's cane allotment if the processor is located in Hawaii, Puerto Rico, Florida, Louisiana, or Texas, or

(ii) A share of the overall cane allotment if the processor is located in any state not listed in paragraph (f)(4)(i) of this section.

(5) CCC will conduct a hearing on a new entrant application if an interested processor or grower requests a hearing.

(6) If a new entrant acquires and reopens a factory that previously produced beet sugar from sugar beets and sugar beet molasses, but the factory last operated during the 1997 crop year, CCC will:

(i) Assign an allocation to the new entrant not less than the greater of 1.67 percent of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years, as determined under § 1435.307, or 1,500,000 hundred-weight.

(ii) Reduce all other beet processor allocations on a pro rata basis.

[69 FR 39813, July 1, 2004, as amended at 69 FR 48765, Aug. 11, 2004; 71 FR 16201, Mar. 31, 2006]

#### § 1435.309 Reassignment of deficits.

(a) CCC will determine, from time to time, whether sugar beet or sugarcane